

Gina Harrison
Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004
(202) 383-6423

PACIFIC  TELESIS
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April 2, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *WT Docket No. 96-18, Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; PP Docket No. 93-253, Implementation of Section 309(j) of the Communications Act – Competitive Bidding*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Revision of Part 22 and Part 90 of the
Commission's Rules to Facilitate Future
Development of Paging Systems

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

WT Docket No. 96-18

PP Docket No. 93-253

REPLY COMMENTS OF PACIFIC BELL

Pacific Bell respectfully replies to comments filed in the above-captioned proceeding about the Commission's proposal to license paging services on a geographic wide-area basis¹ and to award mutually exclusive paging licenses by competitive bid.

I. **Lower Channel Common Carrier Paging Service Would Benefit From Market Area Licensing**

Commentors both laud and lambaste the proposed change from site by site licensing to wide-area geographic licensing (market area licensing). In general, wide area licensing is acknowledged as potentially beneficial. Market area licensees

¹ The current site by site licensing plan requires each transmitter to be licensed.

will be able to respond quickly to market demand and to competition; to modify their systems without prior Commission approval, saving both time and cost; to refocus new found time on providing better engineered service; and potentially to permit cost savings to be redirected for system improvements or reductions in consumer charges. Some even believe that eliminating regulatory delay will stimulate facilities-based competition.² As providers of lower channel common carrier paging systems, we believe those efficiencies are a good reason for the Commission to adopt market area licensing. On the other hand, there is significant disagreement among 900 MHz channels service providers. Some favor the proposed change; some do not.³ Even PCIA reflects the contrasts in viewpoint.⁴ Moreover, small system and rural incumbent licensees are concerned about limitations inherent in having a geographic licensee in their area.

The Commission should be mindful of the concerns of all commentors but those concerns should not deter the Commission from extending the indisputable benefits of geographic area licensing to at least the lower channel common carrier services. Market wide licensing reflects the reality of the paging industry's evolution generally from single-site systems to multi-site systems that cover large geographic

² AT&T Wireless, p. 3.

³ Arch Communications, pp. 3-4; AT&T, Wireless, p. 4; TeleBeeper of New Mexico, p. 1; Huffman Communications, p. 2; Paging Partners Corp., p. 2; American Paging Inc., pp. 2-4 (Support); Datafon II, Inc., pp. 1-4; Radiofone, Inc., p. 1; Ameritech, pp. 7-10 (Oppose).

⁴ Personnel Communications Industry Association (PCIA) supports market area licensing for lower band common carrier frequencies but opposes it for Part 90 shared channels at this time.

areas. It is time to relieve the Commission and paging service providers of the substantial paperwork burden of licensing each individual transmitter.⁵

Some suggest smaller licensing areas than a MTA. We disagree. First, in our areas, consumer expectations are that paging services, like other telecommunications services, will be available in very wide geographic areas. The MTA structure is consistent with the geopolitical division between northern and southern California that Californians understand. Second, using the smallest area as area denominator would result in the same inefficiencies that exist with current site by site licensing. A wider area will better permit economies of scale and scope. Third, from a competitive perspective, paging services will be competing with other telecommunications services, like narrowband PCS, which enjoy MTA-wide licensing.

Concerns of small or rural systems that market area licensing will limit their expansion can be mitigated by provisions that protect incumbent licensees or that permit limited expansion. However, completely foregoing the benefits of market area licensing because of concerns that otherwise can be resolved is to throw the baby out with the bath water.

⁵ AirTouch, p. 7.

II. The Law Requires Regulatory Parity Among Paging Competitors

Several commentators argue that the Commission is required to adopt rules which ensure regulatory symmetry between comparable services.⁶ We agree.⁷ Our concern about regulatory parity is most acute in regards to the height/power limitation on lower band common carriers. Although most commentators urge regulatory parity either between the 900 MHz services or between the 900 MHz services and competing wireless services like PCS, parity is also required between the 900 bands and the lower channel bands in which Pacific Bell operates. AirTouch is exactly correct when it urges the Commission to conform the rules for 929 MHz to the more powerful height-power rules for 931 MHz.⁸ AirTouch argues that “because services provided to the public in these bands are virtually indistinguishable, conforming the technical requirements serves the public interest”.⁹ That rationale applies equally to conforming the lower band channel rules to the 900 band rules. Without such regulatory parity the Commission’s disparate height/power rules will operationally disadvantage competing lower band channel service providers.

An alternative to conforming height/power rules for all paging systems is to eliminate the height/power limitations and instead generally prohibit one paging carrier from interfering with another paging system. Instead of establishing limitations,

⁶ A+ Network, p. 17; AT&T Wireless Service, p. 5.

⁷ See Omnibus Budget Reconciliation Act of 1993, Publ. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993), codified at 47 USC Section 332.

⁸ AirTouch, p. 27.

⁹ AirTouch, p. 27.

the Commission could simply prohibit any licensee from encroaching on any co-channel user's interference contours, leaving the decisions as to how the system should be designed to the licensee. Under that scheme, height/power limitations become unnecessary and as unnecessary regulation, should be eliminated. Both the Clinton Administration and Congress have so directed.¹⁰

III. Limited Expansion For Incumbents Can Be Made To Work

Our earlier comments reflect our agreement with the Commission's proposal to permit limited expansion by incumbent licensees without a geographic licensee's consent.¹¹ Comments by small systems and carriers in less populated areas which are not immediately likely to be served by geographic licensees suggest that permitting more expansion by incumbent systems would be in the public interest. We believe rules could be structured to accommodate increased incumbent expansion while continuing to protect a market area licensee's rights and license value. Expansion of incumbent systems to new areas immediately adjacent to their existing service areas could be permitted under these rules: first, an incumbent licensee would have to notify the market area licensee of the incumbent's interest in expanding. The market area licensee would have 30 days within which to respond to the incumbent. If

¹⁰ Executive Order 12866 (Sept. 30, 1993) (3 C.F.R. 638) (ordering Federal agencies to promulgate only such regulations as are required by law, are necessary to interpret the law or are made necessary by compelling public need); see also Telecommunications Act of 1996, Pub.L. No. 104-104, Title VI, Sections 401-403, 40110 Stat. 56 (1996).

¹¹ NPRM, para. 37 (Expansion permitted within the incumbent licensee's existing interference contours).

the market licensee intended to build-out that area, it would so notify the incumbent and would then have to complete construction within 180 days of its response. If the market area licensee fails to announce its intention to build or declines to build in that area, the incumbent licensee would be permitted to expand with the requirement that construction would be completed within 180 days. An applicant for a market area license would assess the value of a license considering the likelihood of incumbent systems exercising this expansion option. Structured in this manner, the limited expansion option is in the public interest because consumers will be able to obtain services in areas which the market licensee may not intend to immediately provide services. But it will not detract from the rights of the geographic licensee which can protect (and maximize) its interest by offering service in its market area.

Partitioning the geographic license is one way to permit entities that serve rural communities to participate in the geographic licensing scheme. If the Commission establishes partitioning, the partitioned area (or population projections) should be deducted from the coverage requirements.

IV. Auction Rules

We essentially agree that the auction rules are workable. One improvement over previous auctions would be to require applicants to identify and remit an up-front payment for each frequency that they will bid on. This will discourage speculators and auction strategies that detrimentally affect serious contenders.

If licenses are grouped into a 900 MHz group and the lower band channels group, simultaneous auctions for all licenses should be best to preserve their

value interdependencies. However, if the Commission decides that simultaneous auctions for all frequencies would be too complicated or cumbersome, the lower band channel licenses should be auctioned first. Because white space is very limited in the lower bands and incumbents are well established, auctioning the lower band channel licenses would proceed more quickly than auctions for the 900 MHz bands, thereby minimizing the waiting time for 900 MHz auctions to begin.

Also in the interest of avoiding unnecessary delay in bringing services to consumers, auctions should be stopped market by market, frequency by frequency. However, we endorse the suggestion by several commentators that inactivity for two rounds, not one as proposed by the NPRM, trigger the close of the auction for that license.¹²

V. Incumbents That Meet The Build-Out Requirements Should Not Be Required To Participate In Competitive Bidding For A Geographic Area License

Many commentators recognize that it would be inefficient for incumbent licensees that meet the market area license build-out requirements to be required to participate in the competitive bidding process. Some suggest that carriers which now serve 70% of the MTA population should be eligible for a streamlined licensing procedure.¹³ We agree and further suggest that the percentage served be based on the population within the incumbent's interference contours. We also believe that at

¹² Arch Communications Group and Westlink Licensee Corp., p. 18; AirTouch, p. 35.

¹³ Ameritech Mobile, p. 13; AirTouch, p. 40; MetroCall suggests 2/3 of the population or total geographic area, p. 9.

least for the lower channel paging systems, an incumbent licensee that covers at least 34% of the population within its interference contours should be awarded the geographic license for that area without going through competitive bidding. With an incumbent covering more than one third of the population within the MTA, no other licensee will be able to meet the proposed 70% build-out requirement and thus it is unlikely that any competing bids would be entered.

The option of a carrier showing “substantial service” to satisfy a build-out requirement drew many negative comments. While we initially supported the substantial service option, we are convinced by others’ comments that it is too vague a standard and not in the public interest. That option could be an opportunity for unproductive or anticompetitive gameplaying. As such, we join with other commentators in suggesting that the Commission abandon the substantial service build-out criteria. On the other hand, we endorse an additional requirement that a geographic licensee be required to serve 10% of the MTA population at the end of the first year of operation.¹⁴ Requiring immediate performance by a short-term deadline will reduce the potential that a market area licensee could stall its build-out or prolong an eventual default. The additional build-out requirement will accelerate the availability of a reissued market area license for subsequent competitive bidding in the event of default.

¹⁴ AirTouch, p. 18.

VI. Providing Basic Telephone Service Through BETRS Must be Protected

Several commentors raised issues related to BETRS. We join with them in urging the Commission to protect this means of providing basic telecommunications service. BETRS is used in areas where traditional landline service is not successful. Paging services should not cut into the availability of basic telephone service. The Commission's universal service principles¹⁵ would be very hollow if it permitted paging services to deprive rural and isolated consumers of basic telephone service. Where penetration rates of telephone service are low, as they are in some parts of rural California, BETRS can make a positive difference. It will be many years before PCS will be an economically viable service in some of the rural areas which would be served by BETRS.

It is imperative that the Commission demonstrate its strong support of BETRS. The Commission can do so by:

- clarifying that the application freeze does not apply to BETRS;¹⁶
- excluding BETRS from the competitive bidding process;¹⁷
- reserving 450 MHz spectrum from paging geographic licenses to assure the availability of basic telephone service to rural Americans through BETRS.¹⁸
- According primary status to BETRS.¹⁹

¹⁵ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 96-93, released March 8, 1996, para. 30.

¹⁶ USTA, pp. 1-2; Emery Telephone Company, Comment (on interim rules), pp. 2-6.

¹⁷ OPATSCO, pp. 2-3, 6-8; USTA, p. 3.

¹⁸ InterDigital, pp. 4-5.

¹⁹ USTA, p. 2.

VII. Conclusion

For the foregoing reasons, we urge the Commission to adopt wide area licensing for the lower channel common carrier paging service; assure regulatory parity by permitting the same height/power parameters among all paging providers and permit incumbents limited expansion as described above. These recommendations will strengthen the geographic licensing plan proposed by the Commission which is intended to simplify and streamline licensing procedures and provide a flexible operating environment for all paging services.

Respectfully submitted,

PACIFIC BELL



LUCILLE M. MATES

140 New Montgomery Street, Rm. 1526
San Francisco, California 94105
(415) 542-7654

MARGARET E. GARBER

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Its Attorneys

Date: April 2, 1996